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19 FEDERAL TRADE COMMISSION

20  
21 UNITED STATES DISTRICT COURT  
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
23 San Francisco Division

24 FEDERAL TRADE COMMISSION,

25 Plaintiff,

v.

26 AT&T MOBILITY LLC, a limited liability  
27 company,

28 Defendant.

**Case No. 14-cv-04785-EMC**

**STIPULATED REQUEST FOR  
FURTHER LIMITED BRIEFING  
REGARDING DEFENDANT AT&T'S  
MOTION TO DISMISS**

Hearing Date: Mar. 12, 2015

Time: 9:30 a.m.

Courtroom: 5, 17th Floor

Stipulated Request for Further Briefing – 14-cv-04785-EMC

1 Pursuant to Civil Local Rules 7-3(d) and 7-12, plaintiff Federal Trade Commission  
2 (“FTC”) and defendant AT&T Mobility LLC (“AT&T”) (collectively, the “Parties”) hereby  
3 respectfully request Court approval to submit limited additional briefing relevant to AT&T’s  
4 Motion to Dismiss (Dkt. #29). This request is occasioned by recent action by the Federal  
5 Communications Commission (“FCC”). Earlier today, the FCC issued an order reclassifying  
6 broadband internet access services – including the mobile data service at issue in this case – as  
7 common carriage subject to Title II of the Communications Act. *See FCC Adopts Strong,*  
8 *Sustainable Rules to Protect the Open Internet*, FCC press release, Feb. 26, 2015, available at  
9 [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0226/DOC-332260A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0226/DOC-332260A1.pdf).  
10 Because AT&T’s motion relies on the common carrier exemption to Section 5 of the FTC Act,  
11 15 U.S.C. § 45, the parties believe that the Court would benefit from further limited briefing on  
12 what effect, if any, the FCC’s action should have on this matter.

13 Accordingly, the parties request the following additional briefing:

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- 14 1. A sur-reply, not to exceed ten pages, to be filed by the FTC on Tuesday, March 7,  
15 2015.
- 16 2. A sur-sur-reply, not to exceed ten pages, to be filed by AT&T on Friday, March 6,  
17 2015.

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18 Pursuant to Civil Local Rule 5-1(i), I hereby attest that I have obtained concurrence in the  
19 filing of this document from all other signatories to this document.

21 Respectfully submitted,

22 Dated: Feb. 26, 2015

DAVID C. SHONKA  
23 Acting General Counsel

24 \_\_\_\_\_  
25 /s/ Evan Rose  
EVAN ROSE *et al.*

26 Attorneys for Plaintiff  
27 FEDERAL TRADE COMMISSION

1 Dated: Feb. 26, 2015

KELLOGG, HUBER, HANSEN, TODD,  
EVANS & FIGEL, P.L.L.C.

3 /s/ Michael K. Kellogg  
2 MICHAEL K. KELLOGG  
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5 Attorney for Defendant  
6 AT&T MOBILITY LLC  
7

8 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
9 FTC's sur-reply due by Monday, March 2, 2015.  
10 AT&T's sur-reply due by Thursday, March 5, 2015.

11 DATED: 2/27/15

